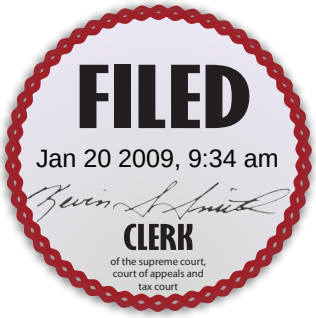

ATTORNEY FOR APPELLANT:

LEANNA WEISSMANN
Lawrenceburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RODNEY SHAFFER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-0808-CR-385
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause No. 15D02-0709-FD-262

January 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Shaffer pleaded guilty to one count of Operating a Vehicle While Intoxicated (OWI) in a Manner that Endangered a Person.[1] The offense was elevated to a class D felony based on Shaffer's prior OWI conviction within five years immediately preceding the instant offense.[2] The trial court subsequently sentenced Shaffer to three years imprisonment. On appeal, Shaffer challenges the appropriateness of his sentence.

We affirm.

On September 7, 2007, Shaffer operated a vehicle on Main Street and Importing Street in Dearborn County while intoxicated in a manner that endangered a person. On September 10, 2007, the State charged Shaffer with operating a vehicle while intoxicated as a class A misdemeanor, operating a vehicle with a BAC of .15 or higher as a class A misdemeanor, and two additional counts of the same offenses for operating a vehicle while intoxicated with a prior conviction within the previous five years as class D felonies. On January 29, 2008, Shaffer entered into a plea without a written agreement to one of the class D felony offenses. On June 17, 2008, the trial court sentenced Shaffer to the maximum term of three years for a class D felony.[3]

Shaffer argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender.

[1] Ind. Code Ann. § 9-30-5-2 (West, Premise through 2008 2nd Regular Sess.).

[2] I.C. § 9-30-5-3(a)(1) (West, Premise through 2008 2nd Regular Sess.).

[3] Ind. Code Ann. § 35-50-2-7 (West, Premise through 2008 2nd Regular Sess.) ("A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years").

See Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Shaffer bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

We begin by considering the nature of the offense. Shaffer operated a vehicle while intoxicated. Although the circumstances were not particularly egregious, Shaffer should not be rewarded for failing to cause injury to person or property as he suggests. Shaffer was simply fortunate that he did not cause injury. Moreover, Shaffer would be facing greater charges had he caused an injury. Additionally, we note that this is Shaffer's eighth alcohol-related conviction over a twenty-year time span.

With regard to the character of the offender, Shaffer's criminal history is telling. Over the course of twenty years, Shaffer has accumulated approximately fifteen convictions, seven of which were for OWI. At the time of the instant offense, Shaffer had a pending OWI charge. Shaffer's recurrent run-ins with the law, including numerous driving while intoxicated offenses, have had no deterrent effect upon his behavior. Quite obviously, Shaffer's character is that of an undeterred recidivist.

Shaffer's argument that his sentence is inappropriate in light of Justice Shepard's 2005 State of the Judiciary address, which focused on alternatives to incarceration, is also unavailing. Shaffer asserts that "[i]n this era of overcrowded prison populations and

burgeoning drug treatment options, Mr. Shaffer's case demonstrates the appropriateness of an alternative to lengthy incarceration." *Appellant's Brief* at 6. Shaffer asserts that his obvious alcohol addiction should be addressed with drug and alcohol treatment, not the maximum sentence in the Department of Correction.

In the pre-sentence investigation report, Shaffer admitted that he had a problem with alcohol. When asked if he had ever received treatment for his alcohol abuse, Shaffer reported that "he once had to attend a six week program at Bethesa for a prior O.W.I." *Appellant's Appendix* at 120. Shaffer's statement indicates that his motivation for his participation in that program was compulsion, not redemption. Clearly, Shaffer's prior treatment was unsuccessful. In light of his failure to address his alcohol addiction when he has had ample opportunity to do so, Shaffer is not entitled to a lesser sentence for refusing to address his addiction. Indeed, we have previously held that a person's failure to seek treatment for a known alcohol addiction can be an aggravating factor. *See Bryant v. State*, 802 N.E.2d 486 (Ind. Ct. App. 2004) (substance addiction is properly characterized as an aggravator, especially when the defendant is aware of the problem and has failed to take steps to address it). We agree with the trial court's assessment that Shaffer "poses a serious risk to community safety based on prior history." *Appellant's Appendix* at 104. Shaffer's three-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Judgment Affirmed.

MAY, J., and BRADFORD, J., concur